

## **EXHIBIT 43**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF  
MASSACHUSETTS, STATE OF  
CALIFORNIA, et al.

Plaintiffs,

v.

NATIONAL INSTITUTES OF HEALTH;  
MATTHEW MEMOLI, M.D., M.S., in his  
official capacity as Acting Director of the  
National Institutes of Health; U.S.  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; and DOROTHY  
FINK, M.D., in her official capacity as  
Acting Secretary of the U.S. Department of  
Health and Human Services,

Defendants.

Civil Action No. \_\_\_\_\_

**DECLARATION OF JENI KITCHELL**

I, Jeni Kitchell, hereby declare:

1. I am a resident of the State of California. I am over the age of 18 and have personal knowledge of all the facts stated here or have knowledge of the matters based on my review of information and records gathered by California State University (“CSU”) staff. If called as a witness, I could and would testify competently to the matters set forth below.
2. I am currently employed by the California State University as the Assistant Vice Chancellor, Finance & Budget Administration and Controller.
3. As the Assistant Vice Chancellor, Finance & Budget Administration/Controller, I am responsible for oversight of financial operations at the CSU and financial reporting from all sources, including all federal grant funding.
4. The CSU receives extensive federal funding for research. A hallmark of CSU research is immersive student learning and discovery that addresses society’s most urgent challenges, including those in health care, agriculture, water, fire prevention and cybersecurity. Undergraduate students who participate in faculty-mentored research are better prepared for future careers, graduate education and leadership roles that contribute to their respective communities.
5. The CSU is the largest four-year public university system in the United States and is the state’s greatest producer of bachelor’s degrees – awarding nearly 127,000 degrees each year – and drives the economy in health care, agriculture, information technology, business, hospitality, life sciences, public administration, education, media and entertainment.
6. The California State University is responsible for the provision of higher education services to students across the state of California and throughout the United States. Consisting of 23

university campuses, nearly a dozen off-campus centers, and over 90 auxiliary organizations (several that are dedicated to sponsored research), the CSU educates more than 450,000 undergraduate and graduate students each year, and serves each of California's regions, from Humboldt to San Diego. The CSU offers more than 4,000 degree programs that align with workforce demands, including in health care and the sciences. CSU alumni make up a global network that is over four million strong. One in twenty Americans with a college degree earned it at the CSU. The CSU has more than 63,000 employees.

7. The CSU also has 10 multi-campus research consortia that provide experiential learning opportunities for students, to prepare them for the workforce and address vital needs in California and across the country.
8. I am providing this declaration to explain certain impacts of the National Institutes of Health ("NIH") Notice Number NOT-OD-25-068, Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates ("Notice"), which purports to immediately reduce facilities and administrative costs payments (also known as indirect costs) to 15% to all NIH grants.
9. CSU's budget relies on federal grant funding for its teaching and research mission, including, but not limited to, allocated funding for staffing, clinical trials, dissemination of results, public outreach, teaching and training students and others, equipment, and numerous other activities to fulfill its teaching and research mission, and serve the people of California and the United States.
10. Federal funds are CSU's single most important source of support for its research, accounting for more than 60% of CSU's total research awards.

11. For the fiscal year ending June 30, 2024, the total amount of all federal research awards to the CSU was \$599,688,000.
12. For the 2023-24 audited fiscal year, the CSU expended over \$158 million in NIH contract and grant funding. A sizable portion of that funding is derived from facilities and administrative cost reimbursements, which are set at a higher negotiated rate than set forth in the NIH Notice. The CSU's NIH grant contracts have varying negotiated rates for reimbursement of indirect costs that range from 20% to 50% or more. The CSU estimates a loss of tens of millions of dollars annually in facility and administrative cost recovery as a result of the NIH Notice. The loss of facilities and administrative cost reimbursements, especially at this level, will have an immediate deleterious impact on the success of research projects and the CSU's ability to maintain the same level of staffing critical to support those research projects.
13. NIH research funding supports the United States' scientific competitiveness worldwide and enables the U.S. to be a global innovation leader. NIH research funding has led to scientific breakthroughs that have improved human health, including new treatments for cancer and diabetes, and declining death rates for heart attack and stroke.
14. Recovering costs of research is essential to maintain the operations of CSU's research. To perform research that is sponsored by federal agencies, the CSU incurs a variety of other significant costs that it would not otherwise incur. Facilities and administrative cost rates apply to federally sponsored research, providing a means of recovering some, but not all, of the costs incurred in the conduct of externally sponsored research that are shared across a large number of projects as well as other functions of the university. They include things such as the maintenance of sophisticated, state of the art high-tech laboratories designed for

innovative federally sponsored research, secured cyberinfrastructure and data repositories, utilities such as light and heat, telecommunications, hazardous waste disposal, and the infrastructure necessary to comply with a broad range of legal, regulatory, and reporting requirements. These resources not only support the infrastructure and buildings that house pioneering research teams, but also the personnel who assure the safety of those participating in clinical trials, the ethics teams that assure those trials are done safely, and the data and privacy teams that protect research subjects' personal data. This funding model recognizes the importance of both direct project costs and the essential indirect costs that sustain the research ecosystem.

15. Research funding is typically awarded through competitive grants processes, meaning that the annual research budget varies from year to year and is dependent on the success of CSU's researchers in these competitions. Federally supported research comes to CSU universities in a combination of both single- and multi-year awards. NIH awards are typically multi-year projects. CSU's 23 universities receive and expend hundreds of millions of dollars annually in multi-year awards for their projects, centers, and institutes, and can proceed with establishing budget estimates for planning purposes in reliance on the facilities and administrative cost recovery rates periodically negotiated between individual campuses and the federal government (the Department of Health and Human Services) that set rates for three to five years.
16. NIH promotes medical research, education, training and practice at the CSU and other universities through a strategic combination of funding for many individual research projects, as well as support for a few large, long-term research programs and centers that involve multiple institutions through subawards. Program awards, unlike the thousands of individual

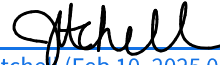
investigator awards to the CSU from the NIH, may receive continuous funding for periods of over five years before the NIH again opens the program to competitive renewal.

17. In developing its annual budget, the CSU did so with the expectation that it would receive the higher facilities and administrative cost recovery rates that had been negotiated and memorialized in a contract through a designated legal process. The NIH Notice's sudden reduction in anticipated federal funds will cause significant budgetary and operational chaos that will have an immediate negative impact on the research projects and programs.
18. The NIH Notice creates confusion and uncertainty for the CSU and the programs it oversees. The reduction in facilities and administrative costs ordered by the NIH Notice will leave gaping holes in the budgets that support the facilities and staff where CSU research occurs and will stop us from serving and meeting some of our critical missions, including education and research.
19. On an annual basis, the federal government is the largest single sponsor of CSU's research enterprise. Because of the low cap created by the NIH Notice, many individuals (including faculty, staff, and students), programs, and initiatives receiving federal funding almost certainly would be forced to significantly scale back or halt their research. This outcome will be potentially devastating to the research projects, to the education and training of new medical professionals and personnel, and to the CSU's entire research enterprise. Without adequate indirect cost recovery, universities cannot maintain the essential infrastructure, administrative support, and research environment necessary to attract and retain top researchers, conduct high-quality research, and promote innovation.

20. The reduction of federal funding to the CSU as set forth in the NIH Notice would be devastating for the entire system. It would result in broad reduction of services, including impacts on education, training, and research.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 10th day of February, 2025, in Long Beach, California.



Jeni Kitchell (Feb 10, 2025 08:11 PST)

Jeni Kitchell  
Assistant Vice Chancellor, Finance &  
Budget Administration and Controller,  
California State University, Office of the  
Chancellor